

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ELIZABETH K. CARLEY, a.k.a.
MELISSA ARIAS

Petitioner,

vs.

NDOC/FMWCC, et al.,

Respondents.

Case No. 2:14-cv-02097-JCM-PAL

ORDER

Petitioner has submitted an application to proceed in forma pauperis (#1) and a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court finds that petitioner is unable to pay the filing fee.

The court has reviewed the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts (“Habeas Rules”). Petitioner has not named the correct respondent. The correct respondent is the warden of the prison where plaintiff is in custody. Habeas Rule 2(a). Petitioner will need to file an amended petition to correct this defect. She will need to re-allege all her grounds for relief in the amended petition, or they will be waived. King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).

Petitioner has submitted a motion for appointment of counsel (#2). Whenever the court determines that the interests of justice so require, counsel may be appointed to any financially eligible person who is seeking habeas corpus relief. 18 U.S.C. § 3006A(a)(2)(B). “[T]he district court must evaluate the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims pro se in light of the complexity of the legal issues involved.” Weygandt v.

1 Look, 718 F.2d 952 (9th Cir. 1983). There is no constitutional right to counsel in federal habeas
2 proceedings. McCleskey v. Zant, 499 U.S. 467, 495 (1991). The factors to consider are not
3 separate from the underlying claims, but are intrinsically enmeshed with them. Weygandt, 718 F.2d
4 at 954. After reviewing the petition, the court determines that the appointment of counsel is not
5 warranted.

6 IT IS THEREFORE ORDERED that the application to proceed in forma pauperis (#1) is
7 **GRANTED**. Petitioner need not pay the filing fee of five dollars (\$5.00).

8 IT IS FURTHER ORDERED that the clerk of the court shall file the petition for a writ of
9 habeas corpus pursuant to 28 U.S.C. § 2254.

10 IT IS FURTHER ORDERED that the clerk of the court shall send petitioner a petition for a
11 writ of habeas corpus pursuant to 28 U.S.C. § 2254 form with instructions. Petitioner shall have
12 thirty (30) days from the date that this order is entered in which to file an amended petition to
13 correct the noted deficiencies. Neither the foregoing deadline nor any extension thereof signifies or
14 will signify any implied finding of a basis for tolling during the time period established. Petitioner
15 at all times remains responsible for calculating the running of the federal limitation period and
16 timely asserting claims. Failure to comply with this order will result in the dismissal of this action.

17 IT IS FURTHER ORDERED that petitioner shall clearly title the amended petition as such
18 by placing the word "AMENDED" immediately above "Petition for a Writ of Habeas Corpus
19 Pursuant to 28 U.S.C. § 2254" on page 1 in the caption, and petitioner shall place the docket
20 number, 2:14-cv-02097-JCM-PAL, above the word "AMENDED."

21 IT IS FURTHER ORDERED that the clerk shall add Adam Paul Laxalt, Attorney General
22 for the State of Nevada, as counsel for respondents.


23 IT IS FURTHER ORDERED that the clerk shall electronically serve upon respondents a
24 copy of the petition and this order. Respondents' counsel shall enter a notice of appearance herein
25 within twenty (20) days of entry of this order, but no further response shall be required from
26 respondents until further order of the court.

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1 IT IS FURTHER ORDERED that the motion for appointment of counsel (#2) is **DENIED**.

2 DATED: June 1, 2015.

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5 JAMES C. MAHAN
6 United States District Judge
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